

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FREDDY PICHARDO,
Plaintiff,

-v-

ERIC ADAMS, *et al.*,
Defendants.

22-CV-4624 (JPO)

ORDER

J. PAUL OETKEN, District Judge:

On June 2, 2022, Plaintiff Freddy Pichardo sued Defendants Eric Adams, in his official capacity as Mayor of the City of New York, Dr. Ashwin Vasan, in his official capacity as Commissioner of the New York City Department of Health and Mental Hygiene, and the City of New York, asserting federal and state claims in the Supreme Court of New York. On June 3, 2022, Defendants removed the action to this Court. (*See* Dkt. No. 1.) On July 29, 2022, the Court ordered Plaintiff to file a notice of appearance by August 10, 2022, noting that failure to do otherwise may result in dismissal for failure to prosecute. (*See* Dkt. No. 8.) Defendants served a copy of the order on Plaintiff’s counsel. (*See* Dkt. No. 9.) To date, Plaintiff has not appeared.

Federal Rule of Civil Procedure 41(b) authorizes a district court to dismiss an action “if the plaintiff fails to prosecute or to comply with the rules or a court order.” *Baptiste v. Sommers*, 768 F.3d 212, 216 (2d Cir. 2014). It is settled that Rule 41(b) “gives the district court authority to dismiss a plaintiff’s case *sua sponte* for failure to prosecute.” *LeSane v. Hall’s Sec. Analyst, Inc.*, 239 F.3d 206, 209 (2d Cir. 2001). Dismissal without prejudice is appropriate here. Plaintiff was “given notice that further delay would result in dismissal,” *U.S. ex rel. Drake v. Norden Sys., Inc.*, 375 F.3d 248, 254 (2d Cir. 2004), and there is prejudice where Plaintiff has caused an

“unreasonable delay.” *Lesane*, 239 F.3d at 210. Dismissal without prejudice appropriately strikes a balance “between alleviating court calendar congestion and protecting a party’s right to due process and a fair chance to be heard.” *Id.* at 209.

Accordingly, this action is hereby DISMISSED without prejudice for failure to prosecute.

The Clerk of Court is directed to terminate the motion at Docket Number 10 and to mark this case as closed.

SO ORDERED.

Dated: September 16, 2022
New York, New York



J. PAUL OETKEN
United States District Judge